

United States Senate

WASHINGTON, DC 20510

March 10, 2022

Shalanda Young
Acting Director
Office of Management and Budget
1650 17th St NW
Washington, DC 20500

Dear Director Young:

I am writing to request increased funding for the National Labor Relations Board (NLRB) in the President's Fiscal Year 2023 Budget Request. Funding for this independent agency has remained flat since 2014.¹ Unsurprisingly, recent analysis has found that the number of full-time NLRB employees declined 31 percent between 2006 and 2019 even though the number of workers the Board protects increased by 50 percent.² An agency that recovered \$56 million in 2021 on behalf of workers whose rights were violated should be funded at a level consistent with the increase in workers protected by the National Labor Relations Act (NLRA).

The NLRB requires additional resources to tackle chronic problems of misclassification in our labor market. The NLRB is in the middle of reconsidering its standard for classifying workers as "independent contractors."³ The General Counsel's recent memo on Inter-agency Coordination correctly identified misclassification of employees as one of the "unfair methods of competition that undermine workers' rights," and I appreciate the efforts of the NLRB to address this issue.⁴ Independent contractor classification is increasingly used to circumvent U.S. labor law, but the NLRB lacks the resources to adequately close this loophole and fully enforce the NLRA's labor protections.⁵

Misclassification of employees erodes the social contract between companies and their workers. Without "employee" status, workers lack protection from vital federal labor laws including: 1) the NLRA – which recognizes a right to engage in collective bargaining, and 2) the Fair Labor Standards Act (FLSA) – which requires employers to pay a minimum wage and overtime.

Independent contractors are often excluded from: 1) Unemployment Compensation (UC), 2) Family and Medical Leave Act (FMLA) benefits, and 3) employer contributions to Social

¹ Mangundayao, Ihna, McNicholas, Celine. February 28, 2022. "Congress should boost NLRB funding to protect workers' well-being." *Economic Policy Institute*. [Link](#).

² Ibid.

³ Office of Public Affairs. December 27, 2021. "NLRB Invites Briefs Regarding Independent Contractor Standard." *National Labor Relations Board*. [Link](#).

⁴ Office of the General Counsel. February 10, 2022. "Memorandum GC 22-03: Inter-agency Coordination." *National Labor Relations Board*. [Link](#).

⁵ Mangundayao, Ihna, McNicholas, Celine, Poydock, Margaret. July 29, 2021. "Worker protection agencies need more funding to enforce labor laws and protect workers." *Economic Policy Institute*. [Link](#).

Security and Medicare.⁶ Too often, companies claim to be promoting worker flexibility, while simply evading the responsibilities of a traditional employment relationship. The result is that workers experience all of the control and economic dependency of traditional employment but none of the benefits. The consequences of worker misclassification for American families are clear: workers are more productive than ever but wages aren't keeping up. As inflation drives up expenses, those classified as "independent contractors" often find themselves working below minimum wage, putting in long hours but struggling to make ends meet. Additional resources are necessary for the NLRB to take additional steps to address worker misclassification to ensure all workers are treated fairly.

Additionally, robustly funding the NLRB allows the federal government to adequately tackle anti-competitive practices in our labor market. President Biden's Executive Order 14036 is a clear commitment by this administration to enforce anti-trust laws on behalf of workers.⁷

I appreciate the dedication of this administration and the NLRB to protecting workers. The COVID-19 pandemic has intensified the challenges the NLRB faces. I urge the Office of Management and Budget to increase funding for the NLRB as it performs the critical work of enforcing U.S. labor law and addressing the way misclassification undermines workers' rights.

Thank you for your consideration of this matter.

Sincerely,



Sherrod Brown
United States Senator

⁶ Donovan, Sarah, Bradley, David, Shimabukuro, Jon. April 28, 2017. "What Does the Gig Economy Mean for Workers?" *Congressional Research Service*. [Link](#).

⁷ Posner, Eric. September 23, 2021. "You Deserve a Bigger Paycheck. Here's How You Might Get It." *The New York Times*. [Link](#).